Exclusive: The ACLU Endorses The Jenner-McCarran Committee, Page 4

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Setback for McCarthy

McCarthy has suffered a setback. The Administration is putting the squeeze on him. The Republicans have a majority, of course, on the Senate Committee on Government Operations of which McCarthy is chairman. Yet at its meeting last week the Committee did not approve the three contempt citations voted four days earlier by its permanent subcommittee on investigations, of which McCarthy is also chairman. It is this subcommittee which carries on the "McCarthy investigation" and it was this subcommittee which Corliss Lamont, Abraham Unger and Albert Shadowitz defied. The subcommittee on January 7 voted to cite them for contempt because they refused to answer questions, invoking the First amendment instead of falling back on the Fifth. The full committee, instead of voting the citation, as it did in the similar case of Harvey O'Connor last summer, took an unprecedented step. It voted to ask the Attorney General's advice before recommending that the Senate cite these three defiant witnesses.

Last summer the Democratic members of the subcommittee walked out in protest against McCarthy's "one-man" rule and his attack on the Protestant clergy. This time they have been joined by enough of their Republican colleages on the full committee to hobbie McCarthy's power in his own little kingdom. Either Margaret Chase Smith of Maine, who dislikes McCarthy on principle, or Karl E. Mundt of South Dakota, who is jealous of a relative Johnny-come-lately in the witch hunt, would be enough to create an anti-McCarthy majority on the full committee. The vote to ask the Attorney General's advice puts McCarthy at the mercy of the Administration. Eisenhower sees a rival and an enemy in McCarthy. Brownell has been trying to put McCarthy in the shade. The Attorney General chose the Jenner committee as his forum for the Harry Dexter White charges. If Brownell "advises" the Senate committee that it would be wiser not to cite Lamont, Unger and Shadowitz for contempt, other witnesses may defy McCarthy in the same way. The effect would be to put McCarthy out of the witch hunt business.

Fact is (as we pointed out in printing the full text last July 25 of the resolution authorizing the Senate Committee on Government Operations) McCarthy and his colleagues have no authority to engage in ideological inquisition. This is the old Senate audit and expenditures committee (nothing has been changed but the name); its jurisdiction is limited to government operations and to questions of "economy and efficiency." A witness who challenges McCarthy's authority to inquire into his political beliefs, as Lamont, Unger and (Einstein advised) Shadowitz did is on firm ground legally. As McCarthy explained lamely at a press conference after the closed meeting of his committee last week, some members felt it would be "unfortunate if a well-known Communist should be cited for contempt and then be successful in winning acquittal because of the committee's jurisdiction", i.e. its lack of jurisdiction.

McCarthy emerged from the closed meeting sobered. He said he had decided not to ask for an additional $100,000 or $150,000 this year with which to double his staff but would hold expenditures at the same level as last year, about $200,000. McCarthy also disclosed that in the future his investigating subcommittee would be unable to file reports until all members of the full committee had been given an opportunity to study them. Obviously somebody is trying to cut him down to size. The Alaskan inquiry on which he has launched is the symbol of his "exile" to more conventional and peripheral issues.

Embarrassment for the Attorney General

The request for advice on the three contempt citations is not without embarrassment for the Attorney General. Suppose he advises that in view of the limited authority of the McCarthy committee it would be best not to risk a challenge—and a defeat—in the courts. Or suppose Brownell and the committee created the same impression by letting the matter of action against Lamont, Unger and Shadowitz quietly drop. What, then, happens to the prosecution of Harvey O'Connor?

Last summer the full committee approved and the Senate without debate rubber-stamped McCarthy's demand for contempt action against O'Connor. The citation was sent to the Justice Department, an indictment was dutifully obtained. Trial is pending. O'Connor challenged McCarthy's authority to inquire as to his beliefs and associations on the same grounds as Lamont, Unger and Shadowitz. If there is no legal ground for holding them in contempt, there is no legal ground for prosecuting O'Connor *and* the Justice Department was wrong in obtaining an indictment.

But No Let-Up In The Witch Hunt

Action to curb McCarthy does not, of itself, mean a let-up in the witch hunt. Jenner, McCarran and Bronwnell—and Eisenhower, as indicated by his new message—are fully as unscrupulous as McCarthy in using the Red hunt for personal and political aggrandizement. But the fact that such action is possible reflects the growth of a more general sentiment in both parties and in the country at large against "McCarthyism." *That* is hopeful.

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Storm-Cellar Bulletin: The Worst May Be Over

Ike's Program and The Outlook

A shrewd French diplomat once told me in Cairo that the key to Egyptian politics is that nothing is what it seems to be. At the moment this applies to Washington.

Item: That proposal in the President's message to deprive Communist "conspirators" of their citizenship. For once, McCarran was right; he called it "half-baked." But from Eisenhower's point of view this is a bright attraction distractor to protect his right flank as he moves cautiously toward peace and trade with the Soviet bloc. A gesture of "toughness" against Communists at home—not very meaningful when examined and of dubious constitutionality—covers a drift toward trade and co-existence with Communism abroad.

Item: That MacArthur style bluster by Dulles before the Senate Foreign Relations Committee last Wednesday on not stopping next time at the Yalu. This covers with belligerent headlines a quieter and more important statement made by Dulles to the committee, "If either country should initiate an armed attack *against any territory not under its administrative control when the Treaty was signed* . . . the [Korean-American Mutual Defense Treaty] would not apply." Since North Korea is not under Rhee's administrative control, this covers an attempt at unification by force. Senator George (D. Ga.) told the press Eisenhower approved a proposal to have the Senate spell this out before ratifying the treaty.

Item: Ditto for the big talk about our readiness to retaliate anywhere in the world. This covers the beginnings of withdrawal from Eurasia and the beginnings of a slow demobilization from present military levels. The key concepts of the Eisenhower Administration may be found in two passages of the Dulles speech before the Council on Foreign Relations: (1) that it was not "sound strategy" permanently to commit United States land forces to Asia to a degree that leaves us with no strategic reserves and (2) that it was "not sound to become permanently committed to military expenditures so vast that they lead to practical bankruptcy." This is the substitution of the Hoover-Taft idea of a Fortress America dependent on airpower for the Acheson-Dulles idea of "building up strength" for "liberation" by ultimatum.

Item: The talk about Republican readiness to prevent a recession. The men running the show in Washington are not fools, however illiterate some of their fronts may be. The combination of military retrenchment and their new farm policies means deflation, recession, a "shakedown" of the economy. They want hard money. They speak for interests which benefit by downturns as well as upturns in the business cycle: cash is potent when prices fall, the big ones gobble the little ones in hard times. They feel labor has grown too powerful and want to shake it up; they want a little "healthy unemployment". This is the way to get a "sound dollar"—their primary object. Hence, the combination of peace abroad with socially reactionary policies at home.

Hemmed In On All Sides

In seeking to achieve this program, the real leaders of the Republican party find themselves hemmed in on all sides. Recent statements by Nixon and Knowland show how powerfully entrenched the China Lobby crowd still is, and how inimical to peace in Asia. The farm bloc will not take to Ike's new program because "flexible supports" and "modernized parity" mean less money for farmers; here the middle farmers stand with the small farmer against the big operator. The labor movement is too strong to allow the G.O.P. to go whole hog with the National Association of Manufacturers; the hostile reaction of Ives (R., N.Y.) shows that labor's voting power in industrial States will make it difficult to put over those portions of Ike's labor program which (mildly) threaten to curb labor's power. The ballot—democracy—the processes of a free society—are an insuperable obstacle and Ike dishes up a compote of mildly reactionary measures and mildly New Deal style reforms.

No Way Out

The Democrats will win the next Congressional election. The public is bored with Reds, and "warmed over spies" will not overcome protest over real distress in the farm country and rising unemployment. The farm situation is the key and the Eisenhower farm message provides a vivid glimpse of the terrible problem of overproduction with which American society must deal once it can no longer maintain prosperity by fighting wars or cleaning up the devastation left in their wake. Ike's talk of "school lunches" as a means of sopping up stupendous surpluses is wistful; on wool, he adopts "the Brannan plan" to let prices seek their natural level while paying the farmer enough to make up the difference needed for a decent living standard. Ike puts a New Deal mask on a Herbert Hoover program; Hooverism, however, is dead and the U.S. irretrievably accustomed to subsidizing the underprivileged. "Socialism" continues to creep up on us under Eisenhower, and the alternative is still between war and greater intervention, more planning, wider public ownership.

Prediction

That Ike will fail to get his program through Congress; that unemployment by Fall will be serious; that the Red scare will begin to die out; that as it does, and liberal economists begin to emerge from their storm cellars, discussion will pick up where it left off in 1939—on the problem of planning American society for peace-time prosperity. The Democrats at the moment are a vacuum, and show no signs of any real program to deal with the economic crisis, but the vecuum will fill up quickly, as it did in the early 30's. Political weather-vane: McCarthy a few weeks ago put the farm problem ahead of Reds as No. 1 issue, and turned up last week in a new demagogic sector with a proposal for 100 percent parity. The worst may be over.

Last Year This Time—It Seemed An Incredible Goal

Ever to reach Vol. 1, No. 50, but here it is, the final issue of our first year. (We publish, as you know, only 50 weeks a year, taking the last two weeks of August as vacation). When the New York *Daily Compass* closed down in November, 1952, I never dreamed I had so busy, useful and fruitful a year ahead of me. Thanks to you, the *Weekly* enters its second year solidly established. This issue will reach—by mail and news stand—almost twice as many readers as the first. An Index of Vol. 1 is being prepared for your convenience and will be published soon as a supplement.

Be sure to get it (if you have not yet renewed) by using the blank on the reverse side. Or, better still, use the prepaid business reply envelope accompanying the "second round" mailing last week of our "success story" promotion letter to all readers. If you have already renewed, or if your subscription does not expire this month, or you are one of our many new readers, please pass that letter and the reply envelope on to some other friend who would enjoy the *Weekly*.

With many thanks, I. F. Stone

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Civil Liberties Before the Supreme Court

Judicial Hot Potato

Though the House Un-American Activities Committee has been running an ideological inquisition for 16 years, not until last Tuesday did the U. S. Supreme Court hear argument on whether this is contrary to the First amendment. The occasion was the appeal of Julius Emspak, secretary-treasurer of the United Electrical Radio and Machine Workers (U. E.), from a conviction for contempt.

Sharp questioning from the bench by Justices Frankfurter and Jackson indicated that the conviction would probably be reversed but without passing on the First Amendment question, an issue the Court has been evading ever since it refused to hear the Hollywood Ten. Emspak had invoked the Fifth as well as the First amendment in failing to answer 68 questions about his beliefs and associations.

Justice Frankfurter seemed to reflect the grounds on which the case would be decided by two questions to David Scribner, counsel for the U. E. One was whether Emspak's invocation of the Fifth as well as the First was intended to cover all 68 unanswered questions; Scribner replied that it was. The other question was how the Emspak case differed, then, from the Blau case (340 U.S. 159). In that Justice Black for a unanimous court (Clark abstaining) held that with the Smith Act on the statute books a witness could not be compelled to answer questions showing possible links with the Communist Party.

The differences between the *Emspak* and *Blau* cases are highly technical. Emspak did not specifically invoke the Fifth each time he evaded a question. Moulder (D. Mo.), who presided at the House Committee hearing, did not—as a judge would—direct the witness each time to answer, on pain of contempt. The Court is likely to give Emspak, not Moulder, the benefit of the doubt on this.

At one point in the argument, Frankfurter seemed to be saying that the Fifth was asserted automatically when a witness declined to furnish information which might tend to incriminate. At another point he interjected the barbed comment on argument by Acting Solicitor General Robert L. Stern that only a "Seventeenth century lawyer" would require repetition of a set verbal formula. During one passage Justice Frankfurter commented angrily, "You tell your Department [Justice] that the Fifth was intended to protect the innocent as well as the guilty" and said a contrary impression was being spread by "people who know better."

Decision of the case on Fifth amendment grounds is easier than on First. To reverse on the latter is to decide what questions a Congressional committee has the right to ask. This would involve a frontal clash with the witch hunters. Last March in *U.S. v. Rumely* (see the *Weekly* for March 21, "When A Big Business Lobbyist Defies A Committee"), the Court did rule unanimously that a Congressional committee investigating lobbying did not have the right to ask the secretary of the Committee for Constitutional Government the source of $2,000,000 in funds spent on anti New Deal propaganda. But that was a powerful big money organization at odds with a left-of-center Congressional investigating committee.

Emspak will be lucky to escape on technicalities. Perhaps in the pending Harvey O'Connor case (where only the First was pleaded) the Court will begin to pass upon what the brilliant defense brief in the *Emspak* case called "a new Inquisition poised to conquer the liberties of a nation." The issue is whether Congress may use the power of investigation as a pillory to intimidate radicals and enforce conformity by fear of obloquy and unemployment. This is the hot potato the Court is still ducking. It grows hotter with the years.

Even A Would-Be Informer

Robert Norbert Galvin, a Mexican resident in this country 35 years, married to an American and father of four American children, joined the Communist Political Association in 1944 and dropped out after the war when it became the Communist Party again. When a woman informer tipped off the Immigration Service some years later, he admitted his past membership, insisted that he was anti-Communist and offered to rejoin the party as an informer to prove it. He was nonetheless ordered deported on the grounds of *past* membership. The case, argued last week before the U.S. Supreme Court, shows to what lengths the government is going in its deportation drive. It also shows just how far a man must go in demonstrating anti-Communism before the American Civil Liberties Union will defend him. For the ACLU appeared as counsel for Galvan, with A. L. Wirin of the Southern California branch in court and the name of Morris L. Ernst on the brief.

The brief said Congressional reasons for making past membership grounds for deportation "all relate to the danger from persons at present active in and *assisting* the Communist movement; we do not doubt," it continues, "that aliens who are, *in reasonable likelihood*, in this class can be deemed undesirable residents and deportable as such." (Our italics). But, the brief continues, to deport all past members, whatever their reasons for joining and whatever their later "change of heart," bears no reasonable relationship to these purposes and is unconstitutional. This mode of argument acquiesces in the use of deportation as a weapon against political ideas, and in the deportation of persons thought "in reasonable likelihood" to share those ideas. Not a very stalwart libertarian position.

"Mexicans Are White Men"

This remark, which some circles in the Southwest would consider subversive, was made by the Attorney General of Texas (just for purposes of argument, we hasten in his defense to add) in another case heard by the Supreme Court last week, *Hernandez v. Texas*. Hernandez was convicted of murder and seeks reversal on the ground that there were no Mexicans on the jury. This would give Mexicans the benefit of the rule laid down for Negroes in the Scottsboro case. Though Mexicans are "white men" in Texas (for purpose of argument, anyway), they never seem to get on juries. The State admitted by stipulation that for 25 years there had never been a person with Mexican or Latin American name on a jury commission, grand jury or petit jury in Jackson County, Texas, where Hernandez was tried. Sounds like a citadel of Anglo-Saxon white Protestant supremacy.

Search And Seizure

The Court's only opinion of the week, hardly a blow for liberty, was a decision—on a gambling raid in Maryland without a warrant—which weakens constitutional protection against search and seizure. Justice Douglas was the sole dissenter.

Hat's Off

This week to Saul Grossman, secretary of the Michigan Committee for Protection of the Foreign Born, for refusing to turn over the records of its members and contributors to the House Un-American Activities Committee. We had hoped to interview him but as we went to press he was still in the District of Columbia jail, waiting to get $3,000 bail.

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The ACLU Endorses the Jenner-McCarran Committee

The ACLU filed a brief amicus with the Supreme Court last week in the *Emspak* case. The reasoning enables one to watch, as on some spiritual seismograph, the inner quakes which shake the organization. The brief begins by suggesting that "Congress can and should enact such additional legislation as might be necessary to deal with the menace of genuine acts of subversion." The ACLU says "Congress has a right to investigate this menace."

After these genuflections the ACLU takes a deep breath and charges that the House Un-American Activities Committee "represents in itself a threat to American democracy both in general and in this specific case." A moment later, it begins to backtrack. The ACLU says, "We have been opposed to the committee because of its *past* arbitrary procedures, but in all fairness to the committee we must point out that their hearing procedures have recently improved." (Our italics). This seems to have been too much for some in the ACLU to stomach. A footnote was hastily added admitting that the ACLU only recently criticized the chairman for his "conduct in the Agnes Meyer case" and the committee for "continued political partisanship" in the Oxnam hearing. There is no footnote to the footnote to explain just where the improvement was.

The ACLU's Thin Line in The Emspak Case

The ACLU position in the Emspak case is that the House Committee was established to investigate "un-American" propaganda and that "threats to the exercise of freedom of speech or association *solely* in an effort to investigate propaganda strikes us as an obvious invasion of the First amendment." The italics are ours. What follows shows how important is the loophole implied by the word "solely". "It might be argued," the brief continues, "that such a result should be tolerated if it is necessary for the legislature to make such a broad inquiry. But we submit that it is entirely unnecessary, as the Congress itself has shown." An endorsement of the Jenner-McCarran committee follows.

"Sen. Res. 366, 81st Congress," the ACLU brief says, "created what is popularly known as the subcommittee on internal security of the Senate Judiciary Committee. The subcommittee's purpose is not to investigate propaganda, but to investigate subversive acts, and the administration of the internal security laws. We have never opposed the charter of this subcommittee, for we believe that Congress has a right to investigate genuine subversive acts."

Is "Subversive" Any Less Vague?

The ACLU in its brief says it opposed the House Committee "from its inception because of the vagueness of the term 'un-American' in its charter." But is the "subversive" in the charter of the Jenner-McCarran committee any less vague? What does the ACLU mean by "genuine subversive acts"? What "genuine subversive acts" were alleged against the teachers the Jenner-McCarran committee has hounded?

"Subversive" and "un-American" are equivalent in vagueness. The new always seems alien and "subversive." Shifting judgments and quick political passion are reflected in the term; it is a political epithet, not a legal yardstick. Congressman Doyle (D. Penna.) a member of the House Un-American Activities Committee, once elicited an admission from its counsel that it had never adopted a definition of either "subversive" or "un-American." There are, the Congressman commented, "as many definitions of 'subversive' and 'un-American' as there are committee members."

The ACLU says inquiry into beliefs and associations violates the First Amendment, but adds pointedly—"whatever may be this court's eventual finding on the question of whether inquiries may be made into beliefs and associations by a committee designed to investigate subversive acts." The ACLU has already decided the question in its own mind. It terms the Senate committee "consistent with civil liberties."

Thus the price paid for the brief amicus is a high one. The ACLU attacks Velde but at the price of embracing Jenner and McCarran. The committee which made itself the delight of the China Lobby by gutting the Institute of Pacific Relations, driving John Carter Vincent and John Stewart Service out of the government and attempting to crucify Owen Lattimore is given the nervous imprimatur of the ACLU.

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